Office-Supreme Court, U.S.
FILED
OCT 20 1984
ALEXANDER L. STEVAS,
CLERK

84-671

NO. ____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

EDDIE RYE, JR. AND ANDREA RYE, his wife,

Petitioners,

vs.

THE SEATTLE TIMES COMPANY; RICK ANDERSON AND JANE DOE ANDERSON, his wife,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

LAW OFFICES OF
LEMBHARD G. HOWELL, P.S.

By LEMBHARD G. HOWELL

Office Address:
800 Arctic Building
Seattle, WA 98104

QUESTIONS PRESENTED

1. Whether the Supreme Court of Washington State, by allowing the decision of the Court of Appeals of Washington State to stand, misapplied the decisions of this Court regarding First Amendment protection of the media in defamation cases with regard to summary judgment motions?

2. Whether the Supreme Court of the State of Washington, by affirming the summary judgment of dismissal, has created an unconstitutionally high standard for establishing a prima facie defamation case under the First Amendment, New York Times Co. v. Sullivan and its progeny?

TABLE OF CONTENTS

	Page
Questions Presented	i
Opinion Below	2
Jurisdiction	2
Constitutional and Statutory Provisions	2
Statement of the Case	3
Reasons for Granting Writ . . .	11
1. The Decision of the State Court Below Conflicts with the Decisions of this Court in a Defamation Case Interpreting the First Amendment.	
Conclusion	18
Appendix	A-1
Denial of Petition for Review Washington Supreme Court . . .	A-1
Rye v. Seattle Times, 37 Wn. App. 45 (1984)	A-2
Copy of Denial of Motion for Reconsideration	A-28
Mandate against Plaintif . . .	A-29
Complaint for Libel	A-31

Answer of Defendant Seattle Times A-39

Affidavit of Gary Donion . . A-45

Seattle Times Article dated May 3, 1978 . . . . . A-47

U.S. Const. Amend. 1 . . . . A-51

TABLES OF AUTHORITY

Table of Cases

Curtis Publishing Co. v. Butts, 388 U.S. 130, 87 S.Ct. 1975, 18 L.Ed 2d 1094 (1967) 12

Gertz v. Robert Welch, Inc., 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed 2d 789 (1974) 13

Gertz v. Robert Welch, Inc., 680 F.2d 527 (1982) 12,16

Goldwater v. Ginzburg, 414 F.2d 324 (1969) 17

Guam Federation of Teachers, Local 1981 A.F.T. v. Ysrael, 492 F.2d 438 (1974). 17

Herbert v. Lando, 441 U.S. 153, 99 S.Ct. 1635, 60 L.Ed 2d 115 (1979) . 13

Hutchinson v. Proxmire, 443 U.S. 111, 99 S.Ct. 2675, 61 L.Ed 2d 411 (1979). 14

New York Times v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed 2d 686 (1964) 11

Rye v. Seattle Times Co., 37 Wn. App. 45, 678 P.2d 1282 (1984) 16

St. Amant v. Thompson, 390 U.S. 727, 88 S.Ct. 1323, 20 L.Ed 2d 686 (1964). 13

Constitutional Provisions

U.S. Const. Article III §2 2,3

U.S. Const. Amend. 1 2,3,11,12

U.S. Const. Amend. 5 2,3

U.S. Const. Amend. 14 2,3

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

EDDIE RYE, JR. AND ANDREA RYE, his wife,

Petitioners,

vs.

THE SEATTLE TIMES COMPANY; RICK ANDERSON AND JANE DOE ANDERSON, his wife,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

PETITIONER'S BRIEF IN SUPPORT OF GRANTING WRIT

The petitioners Eddie Rye, Jr. and Andrea Rye, his wife, respectfully pray that Writ of Certiorari issue to review the judgment of the Supreme Court of the State of Washington entered in this proceeding on July 24, 1984.

OPINION BELOW

The opinion of the Supreme Court of the State of Washington denying review of the Court of Appeals decision was reported at 102 Wn.2d 1004, ____ P.2d____ (1984). The opinion of the Court of Appeals of the State of Washington was reported at 37 Wn. App. 45, 678 P.2d 1282 (1984). Both opinions appear in the appendix.

JURISDICTION

The decision of the Supreme Court of the State of Washington denying review was entered on July 24, 1984. This petition for Certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following Constitutional provisions are involved: The United

States Constitution Article III Section 2, regarding case and controversy requirement arising under the Constitution, Freedom of the Press - First Amendment, the due process clauses of the Fifth and Fourteenth Amendments and the equal protection clause of the Fourteenth Amendment.

STATEMENT OF THE CASE

FACTUAL BACKGROUND

This is a defamation action brought by the petitioner-plaintiffs, Eddie Rye, Jr. and Andrea Rye against the respondent-defendants, The Seattle Times Company and its reporter, Richard Anderson. The case itself arose out of an article published by the Seattle Times on May 3, 1978 and written by defendant Rick Anderson entitled "Cash, Drugs to Officials". No official was specifically identified by name in the article. However, at the time the

article was written and published, petitioner-plaintiff, Eddie Rye, Jr. was, and had been for several prior years, the Executive Director of the Central Area Motivational Program (commonly referred to by the acronym CAMP). The article related that former CAMP employees had stated that they gave kickbacks to a CAMP official. (CP 17-18). The article related that one of those individuals said the kick-backs were in exchange for job security assurances. (CP 19-20).

In November of 1977, the respondents, Seattle Times and Richard Anderson began writing a series of articles about CAMP. The principal sources of the reporter's information for these articles were Jerrold Letnes and Michael Stillwell, both former CAMP employees (CP 17-19). In December of 1977, Eddie Rye, Jr., in his capacity

as Executive Director of CAMP refused to renew Letnes' contract with CAMP. The petitioner believes it was at that time that personal animosities between the two began to develop (CP 4,5), which eventually led to the communication of information to the defendant Richard Anderson regarding alleged improprieties taking place at CAMP.

Stillwell and Letnes met with Gary Donion, a CAMP attorney, on February 18, 1978 at a Seattle bar. Letnes and Stillwell told Donion that Eddie Rye was stealing millions from CAMP and that they "were going to get Rye". (CP 13-14). Donion asked both of them to come to the Central Area Citizen's Committee Board of Trustees, CAMP's governing board with their charges but neither Stillwell nor Letnes did so. By mid-February of 1978, both Letnes and

Stillwell had an open and on-going dialogue with defendant Anderson for several months alleging improprieties on the part of the petitioner. Petitioner dismissed Stillwell from CAMP in April of 1978.

The defendant's Answer denied that the May 3, 1978 Seattle Times article referred to plaintiff, Eddie Rye, Jr., or that it accused him of criminal conduct. (CP 25; CP 248). The defendants have, at this time, apparently abandoned their contention that the May 3, 1978 Seattle Times article was not about plaintiff, Eddie Rye, Jr.

COURT PROCEEDINGS BELOW

On May 5, 1978, Eddie Rye filed a complaint in the Superior Court of King County, Washington, for libel against the Seattle Times and its reporter Richard

Anderson (CP 260). The Seattle Times filed a Motion to Dismiss the claim for failure to state a cause of action because the newspaper article in question did not specifically identify Eddie Rye by name (CP 258; CP 248). The Motion to Dismiss was denied on June 6, 1978 on the basis that reasonable readers and members of the community would have understood the article to refer to Eddie Rye, Jr.

The Seattle Times again moved for Summary Judgment, based on the affidavits of defendant Richard Anderson, Jerrold Letnes and Michael Stillwell (CP 14, 16, 216). The motion argued that Eddie Rye, Jr., as a public official, could not meet his constitutional burden of proving "actual malice" with "convincing clarity". It also argued that the May 3, 1978 newspaper article is a privileged neutral report of

substantial charges against a public official. (CP 190).

Plaintiff's response to this motion argued that Letnes and Stillwell were hostile to Eddie Rye, Jr., because he fired them and that an independent affidavit filed by Gary Donion confirmed that Stillwell and Letnes said "they were going to get Rye". (CP 13-14). It was shown that Anderson was aware of this longstanding hostility of his two sources towards Eddie Rye, Jr., but did nothing to question the veracity or accuracy of what they told him.

As a result, on June 4, 1981, defendant's Motion for Summary Judgment was denied by the Honorable Horton Smith of the King County Superior Court on the basis of the malice and hostility of the two informant sources towards Eddie Rye, Jr. raised a clear issue of material fact

as to whether Anderson should have entertained serious doubts as to the accuracy or veracity of what was reported to him (Rp 11).

The Seattle Times filed a Motion for Discretionary Review to the Court of Appeals on June 10, 1981. The Court Commissioner heard arguments on the motion on July 31, 1981 and remanded the matter to the King County Superior Court for entry of a supplemental certificate indicating the precise matters considered by that court in its ruling.

On August 21, 1981, the trial court certified the record of the materials considered to the Court of Appeals. On November 10, 1981, the Commissioner granted the Motion for Discretionary Review. On March 12, 1984, the Court of Appeals reversed the trial court's order denying the defendant's

Motion for Summary Judgment and dismissed the plaintiff's defamation action on the ground that the plaintiff did not make out a prima facie case by evidence of sufficient clarity that the defamatory publication was made with actual malice, that is, with knowledge that it was false or with reckless disregard of whether it was true or not.

On April 17, 1984, the Court of Appeals denied the Petitioners' Motion for Reconsideration and from this denial the plaintiffs petitioned to the Washington State Supreme Court for review. On July 24, 1984, the Washington State Supreme Court denied petitioner's petition for review of the decision of the Court of Appeals.

REASONS FOR GRANTING WRIT

The Decision of the Court Below Conflicts With the Decisions of this Court in a Defamation Case Interpreting the First Amendment.

The law is well settled that a public official may not recover damages for defamation unless he is able to prove that the statement claimed to be defamatory was "made with 'actual malice' - that is, with knowledge that it was false or not". New York Times Co. v. Sullivan, 376 U.S. 254, 279-80, 84 S.Ct. 710, 726, 11 L.Ed. 2d 686 (1964). This is so that such cases will not have a "chilling effect" on the First Amendment guarantees of freedom of expression and press. See New York Times Co., supra.

It is certainly true that freedom of the press, under the First

Amendment, is one of the touchstones of our democratic society, however such a freedom "does not include absolute license to destroy lives or careers." Curtis Publishing Co. v. Butts, 388 U.S. 130, 170, 87 S.Ct. 1975, 1999, 18 L.Ed 2d 1094 (1967). Consequently, while a publisher is not always required to investigate everything put into an article, a publisher cannot excape liability by feigning "ignorance for profess-[ing] good faith when there are clear indications present which bring into question the truth or falsity of defamatory statements." Gertz v. Robert Welch, Inc., 680 F.2d 527, 538, (1982) cert. den. 459 U.S. 1226, 103 S.Ct. 1233, 75 L.Ed 2d 467 (1983).

In this case, the defendants have published false statements about the plaintiff with the above mentioned "reckless disregard" for the truth or

falsity of the statements. While a totally comprehensive definition of reckless disregard hasn't been made, this Court has defined it as showing "sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publications," St. Amant v. Thompson, 390 U.S. 727 731, 88 S.Ct. 1323, 1325, 20 L.Ed 2d 262, (1968), or a "subjective awareness of probable falsity." Gertz v. Robert Welch, Inc., 418 U.S. 323, 335 n.6, 94 S.Ct. 2997, 3004 n.6, 41 L.Ed 789 (1974).

In order to get this "subjective awareness" it is often necessary for the plaintiff to "focus on the conduct and state of mind of the defendant." Herbert v. Lano, 441 U.S. 153, 160, 99 S.Ct. 1635, 1640, 60 L.Ed 2d 115 (1979). The Court has also stated that the "proof" of "actual malice"

calls a defendant's state of mind into question and does not readily lend itself to summary disposition. Hutchinson v. Proxmire, 443 U.S. 111, 120 n.9, 99 S.Ct. 2675, 2680 n.9, 61 L.Ed 2d 411 (1979).

There is more than sufficient evidence in the case at bar to support the conclusion that the defendants entertained serious doubts as to the truthful contents of the publication and that it was published with reckless disregard for its truth or falsity. The affidavits of Rick Anderson, Jerrold Letnes and Michael Stillwell all state that both Letnes and Stillwell gave information to Anderson on several occasions in 1977 as well as 1978. After Rye dismissed both Letnes and Stillwell from CAMP, they started giving negative and biased information to

the papers about CAMP administration.

The evidence shows that Anderson had a running dialogue with Letnes and Stillwell since the early stages of the stories published by the defendant, The Seattle Times Co. in 1977. In view of these frequent and regular communications with the informants, Anderson was aware of circumstances of their involuntary discharge and their open hostilities to their former employer, Eddie Rye, Jr., especially since they mentioned at one meeting with defendant Anderson that they were out to "get" Rye. Indeed, by mid-February, Letnes and Stillwell were making public accusations against Rye. All of this should have put Anderson on guard that all he was being told was not true.

In opposition to this evidence,

the defendants presented Rick Anderson's affidavit, which stated that he had no reason to disbelieve Letness and Stillwell and that he published the article in good faith. But as mentioned above, such protestations of innocence are not enough to grant a summary judgment motion. See Gertz, supra, 680 F.2d at 538. The Court of Appeals of Washington State granted the summary judgment motion stating that the "plaintiff did not make out a prima facie case by evidence of sufficient clarity that the allegedly defamatory publication was made with actual malice." Rye v. Seattle Times Co., 37 Wn. App. 45, 51, 678 P.2d 1282 (1984).

When there is a summary judgment motion, brought by a defendant in a libel suit, all evidence is to be "viewed in light most favorable to [the plaintiff] and all inferences that can properly be

drawn in his favor by the trier of fact." Guam Federation of Teachers, Local 1581, A.F.T. v. Ysrael, 492 F.2d 438, 441 (1974), cert. den. 419 U.S. 872, 99 C.Ct. 132, 42 L.Ed 2d 111 (1974). If the evidence taken in this light shows there was a genuine issue "of whether actual malice motivated the publication, then the court below [should have] properly denied the [summary judgment] motion." Goldwater v. Ginzburg, 414 F.2d 324, 336 (1969) cert. den. 396 U.S. 1049, 90 U.S. 701, 24 L.Ed 2d 625 (1970) Reh. Den. 397 U.S. 978, 90 SC 1085, 25 L.Ed 2d 274 (1970). It has also been stated that in circumstantial evidence such as that used in the Rye case can be used through "cumulation and by appropriate inferences, [to show] the fact of a defendant's recklessness or his knowledge of falsity." Ibid. at 342.

CONCLUSION

The Court of Appeals for Washington State should never have granted the summary judgment motion when the evidence presented by the plaintiff went to the defendant's subjective mind set. By granting the motion, the Court of Appeals handed down a decision in direct conflict with the United States Constitution and the decisions of this Court. The Supreme Court of the State of Washington, although given the opportunity to do so, failed to correct the error of the Court of Appeals. Therefore, this Court should grant the Petition for Certiorari.

Respectfully submitted,

LAW OFFICES OF
LEMBHARD G. HOWELL, P.S.

By Lembhard G. Howell
800 Arctic Building
Seattle, WA 98104

October 17, 1984

Rye, et al, Petitioners, v. Seattle Times Co., et al, Respondents, No. 50611-6. Petition for review of a decision of the Court of Appeals, March 12, 1984, 37 Wn. App. 45. Denied July 24, 1984.

[No. 10406-3-I. Division One. March 12, 1984.]

Eddie Rye, Jr., et al, Respondents, v. Seattle Times Company, et al, Petitioners.

[1] Judgment - Summary Judgment - Determination - In General. A summary judgment should be granted when, considering all the evidence submitted and the reasonable inferences therefrom most favorably to the nonmoving party, no genuine issue of material fact exists and the moving party is entitled to prevail as a matter of law.

[2] Libel and Slander - Summary Judgment - Prima Facie Case - Degree of Proof. To overcome a motion for a summary judgment, a plaintiff seeking damages for

defamation must present evidence of convincing clarity regarding each element of the action.

[3] Libel and Slander - Public Official - Actual Malice - What Constitutes. A public official or public figure must prove that an allegedly dafamatory statement was made with actual malice, i.e., with knowledge of its falsity or with reckless disregard for its truthfulness.

[4] Libel and Slander - Public Official - Actual Malice - Reckless Disregard for Truth - Hostile Sources. The fact that a statement was based on information provided by sources known to the person who made the statement to be hostile to a public official does not, by itself, establish that the

statement was made with reckless disregard for its truthfulness.

Nature of Action: Defamation action against a newpaper and its employee who had reported that officials of a governmental program which the plaintiff directed had accepted kick-backs of money and narcotics.

Superior Court: The Superior Court for King County, No. 844810, Horton Smith, J., on June 4, 1981, refused to grant a summary judgment in favor of the defendants.

Court of Appeals: Granting discretionary review of the trial court's decision and holding that the plaintiff had not produced evidence of sufficient weight to make out a prima facie case of the defendants' actual malice, the court reverses the trial court and dismisses the action.

Davis, Wright, Todd, Riese & Jones, Daniel M. Waggoner, and Evan Schwab, for petitioners.

Lembhard Howell, for respondents.

ANDERSEN, J. --

FACTS OF CASE

This is a defamation action brought by the plaintiffs, Eddie Rye, Jr., and his wife, against the defendants, Seattle Times Company (publishers of The Seattle Times) and its reporter, Richard Anderson and wife.[1] The trial court denied defendants' motion for summary judgment of dismissal. Thereafter, this court granted discretionary review of that decision. RAP 2.3(b)(1).

---

1 For purposes of convenience, Mr. Rye will be referred to herein as though he is the sole plaintiff and Mr. Anderson will be referred to as though he is the sole individual defendant.

The following facts are essentially undisputed.

The May 3, 1978 article on which this defamation action is based was written by the defendant Rick Anderson and published in The Seattle Times. It reads as follows:

> Cash, drugs to officials.
> Ex-CAMP employes(sic) tell F.B.I. of kickbacks.
> by RICK ANDERSON
>
> Federal authorities have been told of a series of kickbacks involving money and illegal drugs at Seattle's Central Area Motivation Program, the Times had learned.
>
> The Federal Bureau of Investigation has been given direct information from former CAMP employes (sic) who admitted giving the kickbacks and said others witnessed some of the transactions.
>
> Six specific incidents resulted in $1,100 in cash and $200 in cocaine going to a CAMP official, the F.B.I. was told.
>
> The kickbacks were given in return for "job security," one employe (sic) said.
>
> Another said a $200 kickback was given to an official as a "share" of some excess federal funding at the public antipoverty agency.
>
> The kickbacks were given at different times during 1976 and 1977, and at one point required the alteration of a personal contract to produce money one

official said he wanted, the F.B.I. was told.

AN EMPLOYE(sic), a consultant working on contract, said he was told to rewrite the contract, doubling his monthly pay.

Doing so increased his salary from $600 to $1,200, he said. The excess from that month, in the summer of 1977, was then given to the official who had asked that the contract be rewritten.

The $600 excess was given in two $300 payments, made in cash to the official in his office, the employe(sic) said.

CAMP public records show that the employe(sic), who had been contracted at an annual salary of $7,200 ($600 a month), actually received $7,800 in 1977.

An earlier cash payment of $300 was made from money resulting from an official request to increase a special hourly consultant's fee on a CAMP project sponsored by federal funds, the F.B.I. was told.

In that instance, early in the summer of 1977, the employe(sic) said he asked the official why he thoughtthe hourly rate was too low.

"it's too low because I need $300," the employe(sic) said the official responded. Although the work had been completed, the hourly rate was increased and a billing put through. When it was paid, the $300 was given in cash by the employe(sic) to the official in the men's room of a Seattle cafe.

TWO OTHER kickbacks resulted in separate drug transactions in 1977. An employe(sic), as a result of an agreement with an official, received money for special work. In return, the

> employe (sic) told the F.B.I., he gave the official a total of two grams of cocaine, worth $100 a gram, purchased with the money from the special work. The cocaine (selling or possession of which is a felony) was agreed upon before the work was done, the employe (sic) said.
>
> Another employe (sic) said he and one other CAMP worker agreed to divide some excess federal funding and were told that an official wanted part "of the action."
>
> The two employes (sic) were uncertain if it was wrong to take the excess funding - it was being paid to them for work they did on another project, although they both were regularly salaried CAMP employes (sic) - but chose to give the official $200 in cash.
>
> One of the employes (sic) and a witness were present when the official was given an envelope containing two $50 bills and a $100 bill in June, 1976.

At the time the article was written, the plaintiff was executive director of the Central Area Motivation Program, commonly referred to by the acronym CAMP, and had served in that capacity for several years. CAMP, an antipoverty agency, served as a conduit through which federal and state funds were channeled to Seattle's central area. The plaintiff, in his capacity as

CAMP executive director, had substantial responsibility for funds allocated to CAMP from governmental sources and exercised considerable discretionary authority in connection with directing the use thereof.

For the year or so preceding the writing and publication of the article in question, there had been a running controversy concerning CAMP. This appears to have resulted largely from governmental reports that CAMP was short of funds and from investigations of CAMP on the part of federal oversight agencies. Statements by CAMP employees and other individuals in the community contributed their views and opinions to the controversy.

Beginning in November of 1977. The Seattle Times published a series of articles on the controversy written by its reporter, Mr. Anderson, and some of which involved the plaintiff and his role at CAMP. The

articles detailed assorted CAMP matters including problems with a summer food program, irregularities in the handling and transfer of funds within CAMP and CAMP's general shortage of funds.

The sources of the reporter's information for his articles included the audits and reports of the oversight agencies and statements of persons who were or had been employed at CAMP, including a Mr. Mike Stillwell and a Mr. Jerrold Letnes. Mr. Stillwell had been head of the CAMP Consumer Action Project for 4 years and an employee of CAMP for a total of 6 years. Mr. Letnes had been a senior staff member and full-time CAMP employee from 1973 to 1976 with substantial involvement in seeking grants for CAMP, and subsequently operated his own consulting firm which did contractual work for CAMP.

According to the reporter, the information so provided him was both reliable and accurate. The reporter also said that he "did not believe that Letnes or Stillwell had personal animosity toward [the plaintiff], but believed they only wanted to insure that public funds were used properly."

In the reporter's affidavit filed in support of the defendants' motion for summary judgment he tells of a luncheon interview on which the article in question was primarily based. It took place the day before the article was published. Present were Messrs. Stillwell and Letnes, their attorney, the Times reporter Mr. Anderson and a reporter from a Seattle television station. As Mr. Anderson's affidavit relates:

> 15. At the lunch meeting Stillwell and Letnes described a recent visit

to the FBI where they met with an agent after being granted immunity through the United States Attorney. Stillwell and Letnes informed me they had given the FBI full details of the events of CAMP and had admitted to giving Rye kick-backs totalling $1,100 in cash and kick-backs of cocaine. Stillwell and Letnes stated the kick-backs were given to Rye to insure that they would continue having jobs and that others had witnessed some of the kick-backs. They stated they had told the FBI that $300 in kick-backs had been given from an increase in a special hourly consultant's fee being performed by Letnes. They stated they had told the FBI that $300 had been given in cash to Rye in the men's room of a Seattle cafe.

16. I believed Letnes and Stillwell were telling me the truth. I understood they were admitting their own guilt and were "dirtying" themselves by admitting to their participation in such actions. After the story was published and this lawsuit initiated, both Stillwell and Letnes confirmed to me that they still believed their allegations were true and that they had transmitted those allegations to the FBI.

The reporter's affidavit further related that the also confirmed with federal authorities that Messrs. Stillwell and Letnes had in fact made such charges against the plaintiff. Affidavits from

Mr. Stillwell and Mr. Letnes to the foregoing effect were also filed in support of defendants' motion for summary judgment.

According to his own deposition, the plaintiff was in charge of an organization that had as its function the administering of public funds and he was paid by federal moneys. In responding to the defendants' motion for summary judgment on the issue of liability, the plaintiff did not contest that he was a public official or public figure. He has offered the following argument as to why summary judgment should not be granted:

> The evidence presented to the trial court, construed most favorable [sic] to the plaintiff, shows that Anderson had a running dialogue with Letnes and Stillwell since the early stages of the story in 1977. Letnes had been terminated by Rye, and Rye was trying to terminate Stillwell, a fact that Anderson must have been aware of in view of his regular communication with them. By mid-February Letnes and Stillwell were making public accusations against Rye. The Anderson affidavit . . . states that he had no reason to doubt the accuracy of the information give him by Letnes

> and Stillwell, no reason to suspect that they were hostile to Rye, and even if he wanted to check the story with Rye, Rye had told him in March that he would provide no further comments. However, Stillwell and Letnes had been making public accusations against Rye long before May 3, 1981.
>
> The conclusion to be drawn from these facts is that through a regular discourse of several months, Anderson was aware of what was going on between Letnes, Stillwell and Rye. They were not casual or one time sources for Anderson, but individuals Anderson had been dealing with for months. Being aware of what had been going on should have made Anderson question the veracity of the information. The fact that he did not mention any names in the offending article indicates that he did have certain reservations. Anderson had no problem using Rye's name in earlier articles on CAMP.

(Cross reference deleted.) Plaintiff's Response to Motion for Discretionary Review, at 9-11.

We are presented with one basic issue.

ISSUE

Did the trial court err in denying the motion of the newspaper and its reporter for a summary judgment dismissing this defa-

mation action brought against them by the plaintiff who is a public official and/or a public figure?

DECISION

CONCLUSION. The plaintiff did not make out a prima facie case by evidence of sufficient clarity that the allegedly defamatory publication was made with actual malice, that is, with knowledge that it was false or with reckless disregard of whether it was false or not. The trial court, therefore, erred in not granting a summary judgment dismissing plaintiff's action.

[1] Our summary judgment rule, CR 56(c) provides that a summary judgment is available only where "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." A motion for summary judgment will be granted only if after considering all of the pleadings, affidavits,

depositions and all reasonable inferences drawn therefrom in favor of the nonmoving party, a trial court determines that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. LaPlante v. State, 85 Wn.2d 154, 158, 531 P.2d 299 (1975); Balise v. Underwood, 62 Wn.2d 195, 199, 381 P.2d 966 (1963).

The denial of a motion for summary judgment is not an appealable order. RAP 2.2(a). Discretionary review of such orders will not ordinarily be granted, see Roth v. Bell, 24 Wn. App. 92, 104, 600 P.2d 602 (1979) but can be granted in the relatively rare situations posited by RAP 2.3(b). Review was granted in the case before us on the basis of the latter rule, namely that "the superior court has committed an obvious error which would render further proceedings useless . . .", RAP 2.3(b)(1).

[2] In Mark v. Seattle Times, 96 Wn.2d 473, 485, 635 P.2d 1081 (1981), cert. denied, 457 U.S. 1124, 73 L. Ed. 2d 1339, 102 S. Ct. 2942 (1982), decided subsequent to the trial court's decision here under review, the State Supreme Court extensively reviewed the case law concerning the standard to be applied in granting summary judgment in defamation cases and concluded that

> we adhere to the requirement that a defamation plaintiff resisting a defense motion for summary judgment must establish a prima facie case by evidence of convincing clarity.

(Italics ours.) Mark, at 487. This defamation case summary judgment standard is particularly appropriate where, as here, the action is brought by public officials and/or public figures. See Chase v. Daily Record, Inc., 83 Wn.2d 37, 43, 515 P.2d 154 (1973).

The foregoing "new facet" of summary judgment proceedings in defamation cases, to

use the terminology of Chase, it based on reasons of public policy predicated on the first amendment to the United States Constitution.

> Summary judgment serves important function which would be left undone if the courts too restrictively viewed their power. Chief among these are avoidance of long and expensive litigation productive of nothing, and curbing the danger that the threat of such litigation will be used to harass or to coerce a settlement . . .
>
> In the First Amendment area, summary procedures are even more essential. For the stake here, if harassment succeeds, is free debate. . . Unless persons, including newspapers, desiring to exercise their First Amendment rights are assured freedom from the harassment of lawsuits, they will tend to become self-censors. And to this extent debate on public issues and the conduct of public officials will become less uninhibited, less robuts, and less wid-open, for self-censorship affecting the whole public is "hardly less virulent for being privately administered." Smith v. People of State of California, 361 U.S. 147, 154, 80 S.Ct. 215, 219 4 L. Ed. 2d 205 (1959).

(Some citations omitted.) Washington Post Co. v. Keogh, 365 F.2d 965, 968 (D.C. Cir. 1966) cert denied, 385 U.S. 1011, 17 L. Ed 2d 548, 87 S. Ct. 708 (1967).

Mark, at 484-85, Accord, Tait v. KING Broadcasting Co., 1 Wn. App. 250, 255 460 P.2d 307 (1969).

[3] It is, of course, the law that a "public official" or "public figure" may not recover damages for defamation unless he or she proves that the statement claimed to be defamatory "was made with 'actual malice' -- that is, with knowledge that it was false or not." New York Times Co. v. Sullivan, 376 U.S. 254, 279-80, 11 L. Ed. 2d 686, 84 S. Ct. 710, 95 A.L.R. 2d 1412 (1964). Accord, Tilton v. Cowles Pub'g Co., 76 Wn.2d 707, 715 459 P.2d 8 (1969), cert. denied, 399 U.S. 927, 26 L. Ed. 2d 792, 90 S. Ct 2238 (1970). There is no evidence in the reocrd presented for review in this case that the reporter who wrote the article knew anything in the article was false. Rather, the question here is whether he wrote the article with reckless disregard for its truth or falsity.

[4] In opposing defendants' motion for summary judgment on the reckless disregard for truth or falsity issue, the plaintiff showed that: Mr. Stillwell and Mr. Letnes told a third party, an attorney, that the plaintiff "was stealing millions from CAMP" and that "they were going to get [him]"; and, as the plaintiff stated at the time his own deposition was taken, Mr. Stillwell and Mr. Letnes were hostile to him because he had fired them. Considering this showing in light of other arguments made by plaintiff as summarized above, and drawing all reasonable inferences favorable to the plaintiff therefrom, no more appears than the reporter's two principal sources for the articles were hostile to the plaintiff. Even if we go further and consider that this showing circumstantially establishes that the reporter knew of the hostility of his sources, this is still insufficient to

establish a prima facie case by evidence of convincing clarity that the reporter wrote his article with reckless disregard for its truth or falsity.

In point is the United States Supreme Court's decision in St. Amant v. Thompson, 390 U.S. 727, 20 L. Ed. 2d 262, 88 S. Ct. 1323 (1968). As there explained:

> These cases are clear that reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice.

St. Amant, at 731. Accord, Tilton, at 719. In that defamation action, St. Amant (the defendant) made a televised speech wherein he read statements made by his source which falsely accused the plaintiff Thompson (a public official) of criminal conduct. Furthermore, St. Amant had not verified the

information given him by his source before using it. In ordering the defamation case against St. Amant dismissed, the Supreme Court held:

> By no proper test of reckless disregard was St. Amant's broadcast a reckless publication about a public officer. Nothing referred to by the Louisiana courts indicates an awareness by St. Amant of the probable falsity of Albin's statement about Thompson. Failure to investigate does not in iself establish bad faith. New York Times Co. v. Sullivan, supra, at 287-288.

St. Amant, at 732-33.

Another pertinent decision is that of the State Supreme Court in Tilton. There the newspaper article which was alleged to be defamatory contained allegations of impropriety on the part of certain persons and organizations supporting a proposed change in the city government of Spokane from a city manager form to a strong mayor form. One of the issues involved in that action, as here,

was whether the allegations in the article were written with reckless disregard for their truth or falsity. The court in Tilton held that the fact the jobs of two of the reporter's principal sources for his article would be in jeopardy if the form of Spokane's city government was changed, "hardly proves with convincing clarity that [the reporter] was aware of the probable falsity of his story." Tilton, at 723. The judgment for the plaintiff was there reversed and the case remanded with instructions to enter judgment for the defendant.

See also Hotchner v. Castillo-Puche, 551 F.2d 910, 913-14 (2d Cir.), cert. denied sub nom. Hotchner v. Doubleday & Co., 434 U.S. 834, 54 L. Ed. 2d 95, 98 S. Ct. 120 (1977) (publisher's knowledge of author's ill will toward

plaintiff held insufficient by itself to prove knowledge of probable falsity); Loeb v. New Times Communications Corp., 497 F. Supp. 85, 92-93, (S.D.N.Y. 1980) (reporter's failure to verify with plaintiff information obtained from biased source insufficient to establish reckless disregard of the truth).

At the time of oral arguments before this court, the plaintiff submitted a 10-page statement of additional authorities and new arguments. The rule permitting the furnishing of additional authorities to the court does not authorize a party to file an additional appellant's or respondent's brief, but is confined to permitting a party to "file a statement of additional authorities, without argument."[2] (Italics ours.) RAP 10.8.

2 In fairness to the defendants, they were given the right to file a response thereto.

Under the circumstances of this case, however, we deem it necessary to observe that with respect to Hutchinson v. Proxmire, 443 U.S. 111, 120 N.9, 61 L.Ed. 2d 411, 99 S. Ct. 2675 (1979) and other authorities of like effect cited therein for the proposition that when a defendant's state of mind is in issue the case does not readily lend itself to summary disposition, the State Supreme Court has recently observed:

> Where "actual malice", that is, a defendant's state of mind is at issue, the United States Supreme Court in dicta has recently called into quention (sic) the frequest (sic) state practice of summary disposition in such cases. Hutchinson v. Proxmire, 443 U.S. 111, 120 n.9, 61 L.Ed. 2d 411, 99 S. Ct. 2675 (1979). Nonetheless, the general rule appears to require that plaintiff must produce some affirmative evidence to indicate that malice existed, or the court will grant summary judgment. 10 C. Wright & A. Miller, Federal Practice §2730, at 590-92 (1973), and cases cited therein.

Mark v. Seattle Times, at 486 n.3 (part).

Furthermore, the most recent edition of an authoritative text on this subject concludes its discussion of this issue as follows:

> Actions that involve questions of malice often are disfavored torts; that is especially true of those that threaten the free exercise of important rights such as speech and press. Viewed from this perspective, summary adjudication may be thought of as a useful procedural tool and an effective screening device for avoiding the unnecessary harassment of defendant. As Judge Wright observed in Washington Post Company v. Keogh [365 F.2d 965 (D.C. Cir. 1966), cert. denied, 385 U.S. 1011 (1967)], a libel action against a newspaper:
>
> > that state of mind should generally be a jury issue does not mean it should always be so in all contexts, especially where the issue is recklessness, which is ordinarily inferred from objective facts. Summary judgment serves important functions which should be left undone if courts too restrictively viewed their power.
> > * * * In the First Amendment area, summary procedures are even more essential.
>
> Therefore, unless plaintiff can produce some affirmative evidence to indicate that malice existed, summary judgment may well be granted in these cases.

(Footnotes omitted.) 10A C. Wright, A. Miller & M. Kane, Federal Practice §2730, at 242-45 (2d ed. 1983). We agree.

Based on the foregoing, we hold that as a matter of law there is no genuine issue as to a material fact within the contemplation of CR 56(c) and that the defendants are entitled to a judgment of dismissal.

The order denying the defendants' motion for summary judgment is reversed and the case is dismissed.

Durham, C.J. and Williams, J., concur.

IN THE COURT OF APPEALS OF

THE STATE OF WASHINGTON

EDDIE RYE, JR. and
ANDREA RYE, his wife,

Respondents,

v.

SEATTLE TIMES COMPANY, a corporation; RICK ANDERSON and JANE DOE ANDERSON, his wife,

Petitioners.

No. 10406-3-I

ORDER DENYING MOTION FOR RECONSIDERATION

_____/

The Respondents, Eddie Rye, Jr. and Andrea Rye, his wife, having filed their motion for reconsideration and a panel of the court having determined that such motion should be denied; Now, therefore, it is hereby

ORDERED that the motion for reconsideration filed herein be, and the same hereby is, denied.

DATED this 17th day of April, 1984.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

EDDIE RYE, JR., and
ANDREA RYE, his wife,

Respondents,

vs.

SEATTLE TIMES COMPANY, a corporation; RICK ANDERSON and JANE DOE ANDERSON, his wife,

Petitioners.

_____/

MANDATE

NO. 10406-3-I

KING COUNTY NO. 844810

The State of Washington to: The Superior Court of the State of Washington in and for King County. This is to certify that the opinion of the Court of Appeals of the State of Washington, Division 1, filed on March 12, 1984, became the decision terminating review of this court in the above entitled case on August 8, 1984. This cause is mandated to the superior court from which the appeal was taken for further

proceedings in accordance with the attached true copy of the opinion.

Mandate after opinion is filed.

Pursuant to RAP 14.6(c), costs are taxed as follows: Three Hundred Twenty-one and 84/100 Dollars ($321.84) against respondent and in favor of petitioner. The petition for review was denied by an order dated July 24, 1984.

The Honorable Gerard M. Shellan
Presiding Judge
Reporter of Decisions

IN TESTIMONY WHEREOF, I have hereunto set my hand and affix the seal of said Court at Seattle, this 8th day of August, 1984.

Richard D. Taylor
Clerk of the Court of Appeals,
State of Washington

cc: Mr. Lembhard G. Howell
Davis, Wright, Todd, Riese & Jones
Mr. Evan Schwab
Mr. Daniel Waggoner

SUPERIOR COURT OF WASHINGTON,

KING COUNTY

EDDIE RYE JR. AND
ANDREA RYE, his wife,

Plaintiffs, No. _____

vs. COMPLAINT FOR

SEATTLE TIMES COMPANY, LIBEL
a corporation; RICK
ANDERSON AND JANE DOE
ANDERSON, his wife,

Defendants

_____/

COMES NOW the plaintiffs and allege as follows:

FIRST CAUSE OF ACTION

1. That at all times material hereto the plaintiffs were and are residents of the State of Washington residing in King County and constitute a marital community under the laws of said State.

2. That the defendant Seattle Times Company is a corporation authorized to do business in the State of Washington, having its principal office in Seattle, King County, Washington. That said defendant is engaged in the business of the publication of a newspaper entitled "The Seattle Times" which newspaper is one of general circulation throughout the State of Washington, sister states and certain foreign countries.

3. That the defendants Rick Anderson and Jane Doe Anderson his wife, whose first name is unknown to the plaintiffs, are believed to constitute a marital community. That all acts or conduct as hereinafter described and alleged were done for and on behalf of the aforesaid marital community.

4. That at all times material hereto, the defendant Rick Anderson

was and is an employee of defendant Seattle Times Company and was acting within the scope and course of his employment as a reporter for the Seattle Times Company.

5. That on or about May 3, 1978, defendant Seattle Times published and distributed a certain newspaper article written by the by-line of the defendant Rick Anderson entitled "Cash, drugs to officials".

6. That said article falsely, maliciously, recklessly and wontonly charged, accused and implied directly and by innuendo that plaintiff, Eddie Rye Jur(sic) while acting in his employment as Executive Director of Central Area Motivation Program (CAMP) engaged in the commission of crimes.

7. That said article exposed

the plaintiffs and each of them to scorn, hatred, obloquy and/or deprived the plaintiffs of the benefit of public confidence and/or social intercourse.

8. On numerous occasions prior to the article in question which is the subject matter of this action, the defendants published articles on the front pages of "The Seattle Times" identifying the plaintiff Eddie Rye, the Executive Director of CAMP, who bore primary responsibilities for CAMP's operations, i.e. November 17, 1977, Page 1 and A15; November 18, 1977, Page 1 and A7; December 1, 1977, Page 1 and A14, etc.

9. That the conduct in publishing the article of May 3, 1978, was highly unreasonable and constituted an extreme departure from the standards of investigation in reporting ordinarily

adhered to by responsible publishers and was published maliciously and/or in reckless disregard for the truth or falsity of the statement contained in said article.

SECOND CAUSE OF ACTION

1. For a Second Cause of Action, the plaintiffs reallege as though fully set forth herein, all of the allegations set forth above in their First Cause of Action.

2. That the defendant Rick Anderson, was at all times material hereto, a writer and reporter for the Seattle Times Company.

3. That the defendant Rick Anderson wrote, authorized and consented and caused to be published, in the State of Washington, on May 3, 1978, in the Seattle Times newspaper an article entitled, "Cash, drugs to officials".

4. That said article falsely,

maliciously, recklessly and wontonly, charged, accused and implied, directly and by innuendo, that the plaintiff Eddie Rye Jr. while acting in his employment as Executive Director of CAMP engaged in the commission of crimes.

5. That the allegations, accusations and statements as set forth in said article accusing "an official" or "the official" of CAMP (Rye) of crimes were written and composed by the defendant Rick Anderson, maliciously, with knowledge of their falsity or in reckless disregard as to whether said statements were false.

6. That the conduct of the defendant Rick Anderson in writing and authorizing and causing to be published the aforesaid article was an extreme departure from the standards of investigation and reporting ordinarily

adhered to be responsible authors, writers, and/or newspaper reporters.

7. That the direct and proximate result of the writing, reporting and publishing of the aforementioned article was to subject the plaintiffs and each of them to scorn, hatred, obloquy and deprived the plaintiffs of the benefit of public confidence and/or social intercourse.

WHEREFORE plaintiff prays for judgment as follows:

1. On plaintiffs' first cause of action for general damages in the amount of $1,000,000 for each of the plaintiffs.

2. On plaintiffs' second cause of action for general damages in the amount of $1,000,000 for each of the plaintiffs.

3. For plaintiffs' costs and disbursements herein to be taxed.

4. For such other and further relief as the court may deem just and

equitable.

Dated: May 5, 1978.

LEMBHARD G. HOWELL

Attorney for Plaintiffs

201 Metropole Building

Seattle, WA 98104

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

EDDIE RYE JR. and ANDREA RYE, his wife,	:	
Plaintiffs,	:	NO. 844 810
vs.	:	ANSWER OF DEFENDANTS
SEATTLE TIMES COMPANY, et al,,	:	THE SEATTLE TIMES, RICK ANDERSON AND
Defendants.	:	BURGENE ANDERSON

The Seattle Times Company, Rick Anderson, and Burgene Anderson answer the plaintiffs' Complaint as follows:

FIRST CAUSE OF ACTION

1. Defendants admit the allegations contained in Paragraph 1.

2. Defendants admit the allegations contained in Paragraph 2 except they specifically deny that The Seattle Times is a newspaper "of general circulation throughout" "sister states and certain foreign countries."

3. Defendants admit the allegations of paragraph 3 and state that the first name of Rick Anderson's wife is Burgene.

4. Defendants admit the allegations contained in paragraph 4.

5. With respect to the allegations contained in paragraph 5, defendants admit that on or about May 3, 1978, The Seattle Times published and distributed an article written under the byline of defendant Rick Anderson entitled "Cash, Drugs to Officials".

6. Defendants deny each and every allegation contained in paragraph 6.

7. Defendants deny each and every allegation contained in paragraph 7.

8. With respect to the allegations contained in paragraph 8, defendants admit that The Seattle Times previously published articles on its front page which identified the plaintiff, Eddie Rye, as the Executive

Director of CAMP, and that such articles were published on, among other dates, November 17, 1977, page 1 and A-15; November 18, 1977, page 1 and A-7; and December 1, 1977, page 1 and A-14.

9. Defendants deny each and every allegation contained in paragraph 9.

SECOND CAUSE OF ACTION

10. With respect to the allegations in paragraph 1 of plaintiff's Second Cause of Action, defendants reallege their answers to paragraph 1 through 9 of plaintiffs' Complaint.

11. Defendants admit the allegations contained in paragraph 2 of plaintiff's Second Cause of Action.

12. With respect to the allegations in paragraph 3 of plaintiffs' Second Cause of Action, defendants admit that Rick Anderson wrote and consented to the publication on May 3, 1978, in The Seattle Times,

an article entitled "Cash, Drugs to Officials." Defendants deny the remainder of the allegations in paragraph 3.

13. Defendants deny each and every allegation contained in paragraph 4 of plaintiffs' Second Cause of Action.

14. Defendants admit that an article entitled "Cash, Drugs to Officials" was written and composed by Rick Anderson. Defendants deny each and every other allegation contained in paragraph 5 of plaintiffs' Second Cause of Action.

15. Defendants deny each and every allegation contained in paragraph 6 of plaintiffs' Second Cause of Action.

16. Defendants deny each and every allegation contained in paragraph 7 of plaintiffs' Second Cause of Action.

AFFIRMATIVE DEFENSES

17. The article complained of in plaintiffs' Complaint was and is substantially

true and accurate.

18. Publication of the article referred to in plaintiffs' Complaint was and is privileged and protected from liability by the First and Fourteenth Amendments to the United States Constitution, and by the Washington State Constitution.

19. The article complained of concerns the official conduct of public officials and was prepared and published without "actual malice" as that term has been defined and applied by the United States Supreme Court and the Washington Supreme Court.

20. The article complained of was not perceived by the general public as of and concerning plaintiff Eddie Rye Jr.

21. The article complained of was and is an accurate report of charges made by others involving public officials and programs funded by public monies that

are of significant concern and interest to the Seattle community and as such are privileged and protected under the First and Fourteenth Amendments of the United States Constitution.

22. Plaintiffs have suffered no damages as a result of defendant's alleged libel.

WHEREFORE, having fully answered plaintiffs' Complaint, defendants pray that said Complaint be dismissed with prejudice and that the defendants be awarded their costs and such other relief as the Court may deem just and appropriate.

DATED this 13th day of June, 1978.

DAVIS, WRIGHT, TODD, RIESE & JONES
Attorneys for The Seattle Times,
Rick Anderson & Burgene Anderson
By Evan L. Schwab
By Robert A. Blackstone

SUPERIOR COURT OF WASHINGTON, KING COUNTY

EDDIE RYE, JR. et al,

Plaintiff, No. 844810

vs. AFFIDAVIT OF

SEATTLE TIMES COMPANY etc GARY DONION

Defendants.

_____/

STATE OF WASHINGTON)
:ss
COUNTY OF KING)

Gary Donion being first duly sworn states as follows:

1. That in February, 1978 I was legal counsel to the Central Area Citizens Committee Board of Trustees, CAMP's governing body.

2. That on or about February 18, 1978, I encountered Jerrold Letnes and Michael Stillwell at F.X. McRory's restaurant. Both appeared to have been drinking.

3. Both Letnes and Stillwell made allegations at that time that Eddie Rye was stealing millions from CAMP and

statements to the effect that they were going to get Rye.

At that time I asked Stillwell and Letnes to come before the board with their allegations, however neither did so.

Gary Donion

SUBSCRIBED AND SWORN to before me this 26th day of May, 1981.

Notary Public in and
for the State of Washington,
residing at Seattle

BEST AVAILABLE COPY

Cash, drugs to officials [1]

EX-CAMP employes (sic)

tell F.B.I. of kickbacks

By RICK ANDERSON

Federal authorities have been told of a series of kickbacks involving money and illegal drugs at Seattle's Central Area Motivation Program, the Times has learned.

The Federal Bureau of Investigation has been given direct information from former CAMP employes(sic) who admitted giving the kickbacks and said others witnessed some of the transactions.

Six specific incidents resulted in $1,100 in cash and $200 in cocaine going to a CAMP official, the F.B.I. was told.

The kickbacks were given in return for "job security," one employe (sic) said.

Another said a $200 kickback was given to an official as a "share" of some excess

---

1 This article in the appendix is double spaced per the court rule but a copy of the original article is attached to retain the impact which is lost in translation.

federal funding at the public antipoverty agency.

The kickbacks were given at different times during 1976 and 1977, and at one point required the alteration of a personal contract to produce money one official said he wanted, the F.B.I. was told.

AN EMPLOYE, (sic) a consultant working on contract, said he was told to rewrite the contract, doubling his monthly pay.

Doing so increased his salary from $600 to $1,200, he said. The excess from that month, in the summer of 1977, was then given to the official who had asked that the contract be rewritten.

The $600 excess was given in two $300 payments, made in cash to the official in his office, the employe (sic) said.

CAMP public records show that the employe (sic), who had been contracted at an annual salary of $7,200 ($600 a month). actually received $7,800 in 1977.

An earlier cash payment of $300 was made from money resulting from an official request to increase a special hourly consultant's fee on a CAMP project sponsored by federal funds, the F.B.I. was told.

In that instance, early in the summer of 1977, the employe (sic) said he asked the official why he thought the hourly rate was too low.

"It's too low because I need $300," the employe (sic) said the official responded. Although the work had already been completed, the hourly rate was increased and a billing put through. When it was paid, the $300 was given in cash by the employe (sic) to the official in the men's room of a Seattle cafe.

TWO OTHER kickbacks resulted in separate drug transactions in 1977. An employe,(sic) as a result of an agreement with an official, received money for special work. In return, the employe (sic) told the

F.B.I., he gave the official a total of two grams of cocaine, worth $100 a gram, purchased with the money from the special work. The cocaine (selling or possession of which is a felony) was agreed upon before the work as done, the employe (sic) said.

Antoher employe (sic) said he and one other CAMP worker agreed to divide some excess federal funding and were told that an official wanted part "of the action."

The two employes (sic) were uncertain if it was wrong to take the excess funding - it was being paid to them for work they did on another project, although they both were regularly salaried CAMP employes (sic) - but chose to give the official $200 in cash.

One of the employes (sic) and a witness were present when the official was given an envelope containing two $50 bills and a $100 bill in June, 1976.

.le Times

Times Company)

it newspapor Wednesday, May 3, 1978 15¢

Cash, drugs to officials

Ex-CAMP employes tell F.B.I. of kickbacks

by RICK ANDERSON

Federal authorities have been told of a series of kickbacks involving money and illegal drugs at Seattle's Central Area Motivation Program, The Times has learned.

The Federal Bureau of Investigation has been given direct information from former CAMP employes who admitted giving the kickbacks and said others witnessed some of the transactions.

Six specific incidents resulted in $1,100 in cash and $200 in cocaine going to a CAMP official, the F.B.I. was told.

The kickbacks were given in return for "job security," one employe said.

Another said a $200 kickback was given to an official as a "share" of some excess federal funding at the public antipoverty agency.

The kickbacks were given at different times during 1976 and 1977, and at one point required the alteration of a personal contract to produce money one official said he wanted, the F.B.I. was told.

AN EMPLOYE, a consultant working on contract, said he was told to rewrite the contract, doubling his monthly pay.

Doing so increased his salary from $800 to $1,200, he said. The excess from that month, in the summer of 1977, was then given to the official who had asked that the contract be rewritten.

The $800 excess was given in two $300 payments, made in cash to the official in his office, the employe said.

CAMP public records show that the employe, who had been contracted at an annual salary of $7,200 ($600 a month), actually received $7,800 in 1977.

An earlier cash payment of $300 was made from money resulting from an official request to increase a special hourly consultant's fee on a CAMP project sponsored by federal funds, the F.B.I. was told.

In that instance, early in the summer of 1977, the employe said he asked the official why he thought the hourly rate was too low.

"It's too low because I need $300," the employe said the official responded. Although the work had already been completed, the hourly rate was increased and a billing put through. When it was paid, the $300 was given in cash by the employe to the official in the men's room of a Seattle cafe.

TWO OTHER kickbacks resulted in separate drug transactions in 1977. An employe, as a result of an agreement with an official, received money for special work. In return, the employe told the F.B.I., he gave the official a total of two grams of cocaine, worth $100 a gram, purchased with the money from the special work. The cocaine (selling or possession of which is a felony) was agreed upon before the work was done, the employe said.

Another employe said he and one other CAMP worker agreed to divide some excess federal funding and were told that an official wanted part "of the action."

The two employes were uncertain if it was wrong to take the excess funding — it was being paid to them for work they did on another project, although they both were regularly salaried CAMP employes — but chose to give the official $200 in cash.

One of the employes and a witness were present when the official was given an envelope containing two $50 bills and a $100 bill in June, 1976.

BEST AVAILABLE COPY

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Office - Supreme Court, U.S.
FILED
NOV 19 1984
ALEXANDER L. STEVAS,
CLERK

No. 84-671

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

EDDIE RYE, JR. and ANDREA RYE, his wife,
Petitioners,

vs.

THE SEATTLE TIMES COMPANY; RICK ANDERSON and JANE DOE ANDERSON, his wife,
Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Washington

---

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

EVAN L. SCHWAB
4200 Seattle-First National Bank Building
Seattle, WA 98154
(206) 622-3150

DAVIS, WRIGHT, TODD, RIESE & JONES
Of Counsel

TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE	1
QUESTION FOR REVIEW	3
REASONS WHY CERTIORARI SHOULD NOT BE GRANTED	4
A. Petitioner Seeks Review Only of the Application of the Undisputed Legal Standard to the Evidence Presented in the Trial Court, an Issue of Such Narrow Import as Not to Justify Review by This Court	4
B. The Decision Below Is Not in Conflict With Any Other Authority	4
CONCLUSION	7
APPENDIX	A-1

QUESTION FOR REVIEW

Where a public official defamation plaintiff's sole response to a defense motion for summary judgment is to allege that the defendant's news sources may have borne some ill will toward plaintiff, is it error to dismiss the action on the ground that such facts do not constitute the showing of actual malice necessary to raise a genuine issue of fact?

BEST AVAILABLE COPY

TABLE OF AUTHORITIES

	Page
CASES	
Bose Corp. v. Consumers Union of United States, Inc., ____ U.S. ____, 104 Sup. Ct. 1949 (1984)	4,7
Hotchner v. Castillo-Puche, 551 F.2d 910 (2d Cir.), *cert. denied*, 434 U.S. 834 (1977)	5
Kidder v. Anderson, 354 So. 2d 1306 (La.), *cert. denied*, 439 U.S. 829 (1978)	5
Loeb v. New Times Communications Corp., 497 F. Supp. 85 (S.D.N.Y. 1980)	5
New York Times v. Sullivan, 376 U.S. 254 (1964)	6
Pritchard v. Times Southwest Broadcasting, Inc., 277 Ark. 458, 642 S.W.2d 877 (1982)	5
Roberts v. Dover, 7 Media L. Rep. 2296 (M.D. Tenn. 1981)	5
St. Amant v. Thompson, 390 U.S. 727 (1968)	4,5,6
Tilton v. Cowles Publishing Co., 76 Wash.2d 707, 459 P.2d 8 (1969), *cert. denied*, 399 U.S. 927 (1970)	5
OTHER	
Washington Rules of Appellate Procedure 2.3(b)(1)	3

No. 84-671

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

EDDIE RYE, JR. AND ANDREA RYE, his wife,
Petitioners,

vs.

THE SEATTLE TIMES COMPANY; RICK ANDERSON and JANE DOE ANDERSON, his wife,
Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Washington

---

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The respondents respectfully pray that the writ of certiorari requested by the petitioners be denied by this Court.

STATEMENT OF THE CASE

This is an action for defamation, filed by a government official against a local daily newspaper that reported charges of wrongdoing within his agency. As discussed in the opinion of the Washington Court of Appeals dismissing the case, Appendix to Petition ("Pet. App.") at A-2 to A-27, the uncontroverted facts are as follows.

When the allegedly defamatory news story was printed on May 3, 1978, plaintiff Eddie Rye, Jr.[1] was the head of a Seattle antipoverty agency known as CAMP (Central Area Motivational Program).[2] CAMP, which was primarily a conduit for distribution of state and federal funds, had been plagued for some time with charges of mismanagement and malfeasance made by employees and supervising agencies. Many of these charges had been reported in stories printed by defendant The Seattle Times, one of the two major daily newspapers in the Seattle area.[3] Defendant Rick Anderson, a Seattle Times reporter, had investigated and written a number of these stories. In doing so he had frequently obtained information, which had proved to be reliable, from CAMP employees Jerrold Letnes and Mike Stillwell. *See* Affidavit of Anderson ¶¶ 8-12, Appendix ("Resp. App.") at A-2 to A-3.

Shortly before May 3, 1978, Stillwell and Letnes informed Anderson that they had gone to the FBI with a number of charges of fraud and other illegal acts Rye had perpetrated in his capacity as head of CAMP. Anderson then wrote and The Seattle Times published the story at issue in this lawsuit. The story accurately recounted the making of the charges, which included allegations of fraud and of the demand and receipt of kickbacks in cash and cocaine.[4] Anderson later confirmed with federal authorities that Stillwell and Letnes had made such charges. See Affidavit of Anderson ¶ 19, Resp. App. at A-4.

Rye commenced this lawsuit in the Superior Court of the State of Washington for King County on May 5, 1978. In his complaint he asserted libel claims against The Seattle Times and Anderson (referred to collectively below as "The Seattle Times"), alleging in general terms that the May 3 story was

---

[1] The spouses of both plaintiff Eddie Rye, Jr. and defendant Rick Anderson were joined by plaintiff as parties. For convenience, Rye will be referred to as though he were the sole plaintiff, and Anderson will be referred to as though he were the sole individual defendant.

[2] Rye has not disputed that he is a public official for the purposes of this lawsuit. Court of Appeals Opinion, Pet. App. A-13.

[3] Other than wholly-owned subsidiaries, The Seattle Times Company has no parent companies, subsidiaries or affiliates.

[4] The story is set forth in full in the Court of Appeals opinion. Pet. App. at A-6 to A-8.

false and had been published by The Seattle Times with actual malice.

After discovery, The Seattle Times filed a motion for summary judgment on the ground that Rye could raise no genuine issue of fact material to the essential issue of actual malice. Rye's response consisted of two affidavits contending, not that The Seattle Times knew the story was false, but that Letnes and Stillwell were hostile to Rye, that Anderson must have known this, and that accordingly The Seattle Times should have had serious doubts as to their veracity. Court of Appeals Opinion, Pet. App. at A-14.

The trial court denied summary judgment on June 4, 1981, despite the body of clear and well-reasoned authority from courts in Washington and elsewhere holding that allegations of a reporter's knowledge of hostile feelings between his sources and a defamation plaintiff are, as a matter of law, insufficient to show actual malice. The Seattle Times petitioned the state Court of Appeals for discretionary review of this ruling. The Court of Appeals, finding under Washington Rules of Appellate Procedure 2.3(b)(1) that the Superior Court had committed an obvious error, Pet. App. at A-16, reversed the denial of summary judgment and dismissed the case in an opinion entered March 12, 1984. Pet. App. at A-27. Rye petitioned the state Supreme Court for discretionary review, which petition was denied on July 24, 1984. Pet. App. at A-1. Rye then filed this petition for certiorari.

QUESTION FOR REVIEW

Where a public official defamation plaintiff's sole response to a defense motion for summary judgment is to allege that the defendant's news sources may have borne some ill will toward plaintiff, is it error to dismiss the action on the ground that such facts do not constitute the showing of actual malice necessary to raise a genuine issue of fact?

REASONS WHY CERTIORARI SHOULD NOT BE GRANTED

A. Petitioner Seeks Review Only of the Application of the Undisputed Legal Standard to the Evidence Presented in the Trial Court, an Issue So Narrow as Not to Justify Review by This Court on Certiorari.

The petition for certiorari frames the questions for review so generally that it is not immediately apparent just what errors Rye would have this court review. His argument, however, indicates that his primary claim of error is that his allegations concerning the hostility of Anderson's sources were sufficient to raise a material issue of fact under the legal standard applied by the courts below.

The Washington appellate courts' independent review of the facts Rye alleged in light of the proper legal standard certainly was appropriate under *Bose Corp. v. Consumers Union of United States, Inc.*, ____U.S.____, 104 Sup. Ct. 1949 (1984). However, being thus confined to analysis of the evidence offered in this particular case, the opinion below does not present principles of wide enough application to justify review by this court. Petitioner suggests nothing unique or broadly applicable about this case that would make certiorari's additional, extraordinary level of review any more necessary or appropriate here than in any other defamation case. Accordingly, further review on a writ of certiorari is not called for.

B. The Decision Below Is Not in Conflict With Any Other Authority.

The decision of the Court of Appeals is in complete harmony with a well-established line of similar authorities springing from principles recognized by this Court since *St. Amant v. Thompson*, 390 U.S. 727 (1968), against which Rye has not cited a single conflicting case.

In reiterating his argument in the petition for certiorari, Rye continues to contend as he has from the beginning that his allegations of source hostility, without more, made out a sufficient case of actual malice to defeat summary judgment.

See Petition at 14-15. Even setting aside the question of whether Rye made any adequate showing that Anderson knew of this alleged hostility, *see* Court of Appeals Opinion, Pet. App. at A-20, this argument must still fail because it completely ignores the numerous authorities squarely holding that evidence of a source's hostility to the plaintiff is inadequate, standing alone, to make out even a prima facie case of actual malice. *Hotchner v. Castillo-Puche,* 551 F.2d 910 (2d Cir.), *cert. denied,* 434 U.S. 834 (1977) (reversing judgment for the plaintiff against publisher and dismissing action where the only evidence of the publisher's "actual malice" was knowledge of its author's animosity to plaintiff); *Loeb v. New Times Communications Corp.,* 497 F. Supp. 85 (S.D.N.Y. 1980) (granting summary judgment for defendant where the only evidence of "actual malice" was plaintiff's "inherently hostile relationship" with sources, 497 F. Supp. at 93 n.12); *Kidder v. Anderson,* 354 So. 2d 1306 (La.), *cert. denied,* 439 U.S. 829 (1978) (judgment for plaintiff reversed because the trial court had focused on the antagonism of the sources to the plaintiff, rather than on their credibility and access to information). *See also Tilton v. Cowles Publishing Co.,* 76 Wash.2d 707, 723, 459 P.2d 8, 17 (1969), *cert. denied,* 399 U.S. 927 (1970) (reliance on sources proper, even though the sources themselves had reason to oppose the plaintiffs); *Pritchard v. Times Southwest Broadcasting, Inc.,* 277 Ark. 458, 642 S.W.2d 877 (1982) (reporter may rely on biased source); *Roberts v. Dover,* 7 Media L. Rep. 2296 (M.D. Tenn. 1981) (reporter may rely on contradicted source).

The rule of these cases springs from the basic principles of modern defamation law developed in this Court's decision in *St. Amant v. Thompson, supra.* In that case, St. Amant had allegedly defamed the plaintiff, a sheriff, by quoting statements of a dissident Teamster member accusing the sheriff of improprieties with union officials. 390 U.S. at 728-29, 733. Noting that

> reckless conduct is not measured by whether a reasonably prudent man would have published or would have investigated before publishing . . . [t]here must be sufficient evidence to permit the conclusion that

> the defendant in fact entertained serious doubts as to the truth of his publication . . . [,]

390 U.S. 731, the Court found that St. Amant's failure to make an independent investigation of the charges, furnish proof of his source's veracity, or take the other steps plaintiffs suggested should be required, was not sufficient to show recklessness under this standard. In support of this conclusion the Court pointed to several facts that are also present in this case, including a prior relationship between St. Amant and his source, and St. Amant's verification of other aspects of his source's information. Most importantly for Rye's argument that actual malice may be inferred from a source's hostility, however, the Court specifically found that St. Amant's knowledge that his source

> was engaged in an internal struggle in the union- . . . [and] seemed to St. Amant to be placing himself in personal danger by publicly airing the details of the dispute

weighed *against* a finding of actual malice. 390 U.S. at 733.

Rye has not cited, and The Seattle Times has not found, any case in which a source's bias, standing alone, was held to be sufficient evidence to make out a prima facie case of actual malice. Such a case would be of little weight in any event, as it would be contrary not only to the precedents just discussed but to the practical policy balance underlying the rule of *New York Times v. Sullivan,* 376 U.S. 254 (1964), as both *St. Amant* and this case illustrate. First, since some degree of hostility could always be inferred from the act of furnishing derogatory information, if a source's hostility were adequate evidence of actual malice there would be evidence of actual malice whenever a defamatory statement was based on a source's information. This would clearly be an improper result under *St. Amant.* Second, and perhaps even more importantly, even truly disaffected and "hostile" persons will often be the best, if not the only, sources of information concerning official misconduct. Free debate will be stifled if the criticisms of such persons can be reported only at the risk of an automatic inference of actual malice, and thus of greatly increased exposure to protracted libel litigation and ultimate liability should those criticisms prove incorrect.

CONCLUSION

The issue raised by the petitioner in this case is limited to the question of whether the evidence he presented in the trial court was sufficient to meet the legal standard applied by the trial court. This issue received the independent appellate review prescribed by *Bose Corp. v. Consumers Union* in the Washington State Court of Appeals. Further review of this narrow issue is not called for. Furthermore, the decision below is in harmony, not conflict, with other pertinent authorities, including the leading decisions of this Court. Accordingly, there is no reason for this court to grant certiorari, and the petition should be denied.

Respectfully submitted this 17th day of November, 1984.

DAVIS, WRIGHT, TODD, RIESE & JONES
Attorneys for Respondents,
Seattle Times Company, Rick
Anderson and Jane Doe Anderson

By _____
Evan L. Schwab

APPENDIX

IN THE
SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

NO. 844 810

EDDIE RYE, JR. and ANDREA RYE, his wife,
Plaintiffs,

v.

SEATTLE TIMES COMPANY, a corporation;
RICK ANDERSON and JANE DOE ANDERSON, his wife,
Defendants.

Affidavit of Rick Anderson In Support Of Motion For Summary Judgment

---

STATE OF WASHINGTON
COUNTY OF KING } ss.

The undersigned, being first duly sworn, deposes and says:

1. I am a reporter for the Seattle Times and write a regular column for the Seattle Times.

2. I am the reporter and the author for the May 4, 1978 article about CAMP that is the subject of this lawsuit.

3. Because of my continuing observation of the administration of poverty programs in Seattle, I became aware of the existence of CAMP. During the period from 1973 to 1978, CAMP was the major anti-poverty agency operating in the Central Area of Seattle.

4. CAMP's job, in essence, was to funnel funds from the federal government to a number of its own projects and other projects outside of CAMP. Such projects included cultural programs, Head Start and programs to provide food and social services to the poor and disadvantaged.

5. I also became aware of the role of Eddie Rye, Jr. as executive director of CAMP. In this role, Rye had and exercised substantial responsibility and discretion over large amounts of public funds. I was aware of Rye's previous jobs as personnel officer for the Seattle-King County Economic Opportunity Board and from 1969-1973, as Director of CAMP's Educational Talent Search Project.

6. I also became aware of Eddie Rye, Jr. as a prominent figure and community activist who thrust himself into a number of substantial public controversies and who sought publicity from the media for his activities. The articles attached as exhibits to this Affidavit and incorporated herein [not reproduced in this Appendix] by reference are articles from the Seattle Times that reflect Rye's activities. These articles are accurate copies of articles that were published in the Seattle Times about Rye and CAMP. Other media, both newspapers and the electronic media, also gave substantial publicity to Rye in his activities both as executive director of CAMP and in a number of public controversies.

7. During 1977 and 1978 there was a general and continuous controversy about CAMP. It was fueled by public reports that CAMP was short of funds, by investigations from federal oversight agencies and reports of those investigations, and by statements of employees of CAMP and individuals within the community that CAMP served.

8. I wrote a series of articles beginning in November, 1977 about CAMP, Eddie Rye's role at CAMP, and the difficulties and problems facing both. These articles detailed problems with a summer food program, irregularities in the handling and transfer of funds within CAMP, CAMP's shortage of funds, and audits by agencies charged with oversight of CAMP.

9. In writing these articles I became familiar with the general situation of CAMP and relied on information from the oversight agencies and from sources who were or had been employed at CAMP.

10. Two of the people I relied upon were Mike Stillwell and Jerrold Letnes. Mike Stillwell had been head of the CAMP Consumer Action Project for four years and a CAMP employee

for six years. The program he headed had been rated "outstanding" by federal oversight agencies. Stillwell provided me with reliable and accurate information for my articles throughout 1977 and into 1978. I understood that Stillwell provided me with this information to help clean up CAMP so that better services would be provided to the people of the community. I also understood that Stillwell strongly supported CAMP and did not want to see it destroyed.

11. Jerrold Letnes had been a full-time employee of CAMP from 1973 to 1976 with substantial involvement in seeking grants for CAMP. He left CAMP to form his own consulting firm, but continued to do some work for CAMP. Letnes had been a member of the senior staff of CAMP and had provided me with reliable and accurate information for articles in 1977 and 1978. I understood that Letnes wanted to see CAMP cleaned up, not destroyed, so that the people of the Central Area community would be better served.

12. I knew of the positions of Stillwell and Letnes within CAMP and their access to the information. I knew they had given information to the public investigatory officials as well as to other news media. No one had contradicted the information they gave. I did not believe that Letnes or Stillwell had personal animosity towards Rye, but believed they only wanted to insure that public funds were used properly.

13. I had called Eddie Rye on an ongoing basis for comments before publication of articles about CAMP and Rye. Rye provided such comments until early 1978, but by March 1978 Rye would no longer provide me with comments. Rye made clear to me that I should not bother calling for further comments.

14. On 8/3/78 I had a lunch interview with Letnes and Stillwell, their attorney, Clyde MacIver, and KING reporter, Don McGaffin.

15. At the lunch meeting Stillwell and Letnes described a recent visit to the FBI where they met with an agent after being granted immunity through the United States Attorney. Stillwell and Letnes informed me they had given the FBI the full details of the events of CAMP and had admitted to giving Rye kick-

backs totalling $1,100 in cash and kick-backs of cocaine. Stillwell and Letnes stated the kick-backs were given to Rye to insure that they would continue having jobs and that others had witnessed some of the kick-backs. They stated they had told the FBI that $300 in kick-backs had been given from an increase in a special hourly consultant's fee being performed by Letnes. They stated they had told the FBI that $300 had been given in cash to Rye in the men's room of a Seattle cafe.

16. I believed Letnes and Stillwell were telling me the truth. I understood they were admitting their own guilt and were "dirtying" themselves by admitting to their participation in such actions. After the story was published and this lawsuit was initiated, both Stillwell and Letnes confirmed to me that they still believed their allegations were true and that they had transmitted those allegations to the FBI.

17. I and Don McGaffin then independently wrote and used stories based on the information provided by Letnes and Stillwell.

18. I neutrally and accurately reported what I believed to be the true, objective facts that Stillwell and Letnes had made charges to the FBI. The article of May 4, 1978 that is the subject of the lawsuit is an accurate representation of the charges I was told Stillwell and Letnes made. I believed Stillwell and Letnes were telling the truth.

19. I later confirmed with federal authorities that Stillwell and Letnes had made such charges.

/s/ RICK ANDERSON

Rick Anderson

SUBSCRIBED AND SWORN to before me this 29th day of April, 1981.

/s/ DANIEL WAGGONER

Notary Public in and for the State of Washington, residing at Seattle